

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 85-01
(1985)

**Disqualification Considerations Where Spouse Is on Staff
of Public Defender or Law Enforcement Agency,
or Where Secretary Is Married to Sheriff**

Issues

1. Must a judge disqualify himself or herself when a spouse is a member of the public defender's office or a law enforcement agency?

Answer: Not automatically; see discussion.

2. Is there any impropriety in a judge hearing criminal cases when the judge's secretary is the spouse of the county sheriff?

Answer: Yes, see discussion.

Discussion

Issue 1

17A A.R.S. Supreme Court Rules, Code of Judicial Conduct, Rule 81, Canons 3C(1)(d)(ii)(iii) and (iv) provides in part as follows:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(d) he or his spouse, or a person in the third degree of relationship to either of them, or the spouse of such a person;

(ii) is acting as a lawyer in the proceeding absent the consent of counsel;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding

In the State Bar of Indiana Ethics Opinion No. 2 (1983), it was decided that a lawyer-spouse is not prohibited from serving as a deputy prosecutor provided the lawyer does not work on matters pending in the judge's court. Further, the committee noted that individual and not the vicarious disqualification of the entire prosecutor's office is the appropriate course of action. *State v. Tippecanoe County Court*, 432 N. E. 2d 1377, 1379 (Ind. 1982).

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In Informal Opinion 1260 of the American Bar Association Committee on Ethics and Professional Responsibility, it was decided that an attorney may not practice before a judge who was his sister-in-law. The committee stated that the judge would have to disqualify herself in those cases in which the attorney was to appear before her. See also ABA Formal Opinion 200.

The Advisory Committee, in Opinion 77-01, dealt with the issue of whether a judge must recuse himself where his daughter is employed as a paralegal in a law firm appearing before him. The opinion stated in part:

There is no requirement per se that the judge must disqualify himself on those cases in which his daughter's employer is involved . . . It is, however, possible that in certain instances his daughter's work on a case might be so extensive that a question arises as to whether the judge's impartiality is in jeopardy.

Similarly, the Advisory Committee does not find any automatic impropriety in judges hearing criminal cases so long as their spouses do not appear before them nor have they any interest in the outcome of a case that could reasonably affect their respective professional or financial interest.

Issue 2

The applicable Canons of the above referenced Code of Judicial Conduct are as follows:

Canon 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and *independence* of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective (emphasis added).

Canon 2

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and *impartiality* of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he *convey* or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness (emphasis added).

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Canon 3B(4)

A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

The duty of judges to act in a professional manner in avoiding even the appearance of being potentially subject to outside influence is great. The linchpin of our judicial system is the principle that judges are and remain neutral and disinterested in all matters. A corollary to this principle is that judges be detached from all parties who may have any interest in matters *sub judice*, such as persons associated with law enforcement, criminal prosecution, and criminal defense. There can be no greater harm to the judiciary than the idea that it is merely an extension of, or can be influenced by, law enforcement. Any serious doubt cast upon the integrity of the judiciary requires a resolution in favor of disqualification. *State v. Tippecanoe*, *supra*.

The American Bar Association Committee on Ethics and Professional Responsibility issued Informal Opinion 692 wherein it decided that an attorney engaged in criminal law may not ethically employ a secretary whose husband is a police detective. The committee reasoned that an attorney should not allow a situation to exist where there was a possibility that a client's confidences might be compromised. Similarly, judges should not place themselves in a position where their independence, integrity, and impartiality might be questioned. It is the opinion of this committee that the appointment by the judge of the sheriff's wife gives an appearance to the public that he has some special relationship with law enforcement in general and the sheriff in particular.

Accordingly, it is the opinion of this committee that the judge should not continue to hear criminal matters while retaining his present secretary.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1, 2, 3B(4) and 3C(1)(d)(ii), (iii) and (iv) (1985).

Other References

State v. Tippecanoe County Court, 432 N.E.2d 1377, 1379 (Ind. 1982).

American Bar Association, Committee on Ethics and Professional Responsibility, Informal Opinions 692, 1260 (undated).

American Bar Association, Formal Opinion 200 (January 1940).

Arizona Judicial Ethics Advisory Committee, Opinion [77-01](#) (April 29, 1977).

State Bar of Indiana, Ethics Opinion No. 2 (1983).